



166602

PHYSICAL DOCUMENT

LPS-n166602-v1

COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION -
RCRA AND CWA

Author: Woolner, Rhodora

Document Type: PLEADING

LSA(s):

Co-Council:

Council LSA(s):

Distribution List: Woolner, Rhodora (ENRD);Lattin, Sue (ENRD);Rose, Robert (ENRD); Lu, Sarah (ENRD)

Fileroom: LPS - Main Justice

DJ#:

Case Name:

Court:

Notes: SCANNED/UNASSIGNED

Double-Sided:

Received Date: 12/8/2010

Urgent:

Oversize:

Bound Document:

1 Jack Silver, Esq. SBN 160575
2 Law Office of Jack Silver
3 Post Office Box 5469
4 Santa Rosa, CA 95402-5469
5 Tel. (707) 528-8175
6 Fax. (707) 528-8675
7 lhm28843@sbcglobal.net

8 Attorneys for Plaintiff
9 NORTHERN CALIFORNIA RIVER WATCH

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 NORTHERN CALIFORNIA RIVER
13 WATCH, a 501(c)(3) non-profit Public
14 Benefit Corporation,

15 Plaintiff,

16 v.

17 ECODYNE CORPORATION and
18 DOES 1 -30, Inclusive,

19 Defendants
20
21
22
23
24
25
26
27
28

CASE NO. 3:10-cv-05105 MEJ

PROOF OF SERVICE OF COMPLAINT

10 DEC -8 PM 2:26

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 100 E Street, Suite 210, Santa Rosa, CA 95404. On November 15, 2010, I served the following described document(s):

**Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation
(Environmental - RCRA - 42 U.S.C. § 6901 *et seq.*, CWA - 33 U.S.C. § 1251 *et seq.*)**

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

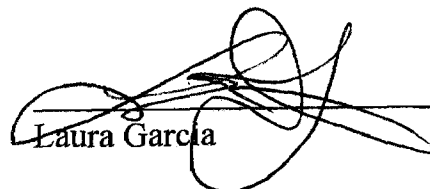
Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044-4390

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on November 15, 2010 at Santa Rosa, California.



Laura Garcia

PAGE
BREAK

1 Jack Silver, Esq. SBN 160575
2 E-mail: lhm28843@sbcglobal.net
3 Law Office of Jack Silver
4 Post Office Box 5469
5 Santa Rosa, CA 95402-5469
6 Tel. (707) 528-8175
7 Fax. (707) 528-8675

8 Attorneys for Plaintiff
9 NORTHERN CALIFORNIA RIVER WATCH

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 NORTHERN CALIFORNIA RIVER
13 WATCH, a 501(c)(3) non-profit Public
14 Benefit Corporation,

15 Plaintiff,

16 v.

17 ECODYNE CORPORATION, and
18 DOES 1-30, Inclusive,

19 Defendants.

20 **COMPLAINT FOR INJUNCTIVE
21 RELIEF, CIVIL PENALTIES,
22 RESTITUTION AND REMEDIATION
23 (Environmental - RCRA - 42 U.S.C. § 6901
24 et seq.; CWA - 33 U.S.C. § 1251 et seq.)**

25 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH, a 501(c)(3) non-
26 profit Public Benefit Corporation (hereafter, "PLAINTIFF,") by and through its attorneys, and
27 for its Complaint against Defendants, ECODYNE CORPORATION and DOES 1-30, Inclusive
28 (hereafter, "DEFENDANTS,") states as follows:

29 I. NATURE OF THE CASE

30 1. This is a citizens' suit brought against DEFENDANTS under the citizen suit
31 enforcement provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et*
32 *seq.*, (hereafter, "RCRA,") specifically RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) and
33 RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), RCRA § 3004, 42 U.S.C. § 6924; RCRA

1 § 3005, 42 U.S.C. § 6924, and RCRA § 4005; 42 U.S.C. § 6945, to stop DEFENDANTS from
2 repeated and ongoing violations of the RCRA. These violations are detailed in the Notice of
3 Violations and Intent to File Suit (hereafter, "RCRA NOTICE,") attached hereto as EXHIBIT
4 A and made part of these pleadings.

5 2. As described in the RCRA NOTICE and below, PLAINTIFF alleges
6 DEFENDANTS are in violation of a permit, standard, regulation, condition, requirement,
7 prohibition, or order which has become effective pursuant to the RCRA (42 U.S.C. §
8 6972(a)(1)(A); 42 U.S.C. § 6924, 42 U.S.C. § 6925; 42 U.S.C. § 6945).

9 3. As described in RCRA NOTICE and below, PLAINTIFF alleges DEFENDANTS
10 to be past or present generators, past or present transporters, or past or present owners or
11 operators of a treatment, storage, or disposal facility, which has contributed or which is
12 contributing to the past or present handling, storage, treatment, transportation, or disposal of a
13 solid or hazardous waste which may present an imminent and substantial endangerment to health
14 or the environment. (42 U.S.C. § 6972(a)(1)(B); 42 U.S.C. § 6924, 42 U.S.C. § 6925; 42 U.S.C.
15 § 6945).

16 4. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations,
17 the imposition of civil penalties, and other relief for DEFENDANTS' violations of the RCRA's
18 standards and regulations applicable to the handling, disposal, transportation, treatment, use or
19 storage of solid or hazardous waste as described in the RCRA NOTICE; and, for
20 DEFENDANTS' violation of the RCRA's prohibition against creating an imminent and
21 substantial endangerment to human health or the environment.

22 5. RCRA § 3005, 42 U.S.C. § 6925 requires facilities to obtain permits for the
23 handling, storage, treatment, transportation and/or disposal of hazardous waste.

24 6. RCRA § 3004, 42 U.S.C. § 6924 requires owners and operators of hazardous waste
25 treatment, storage, and disposal facilities to follow enumerated standards. These requirements
26 are enumerated in 40 C.F.R. Part 264 and include requirements for General Facility Standards
27 (Subpart B), Preparedness and Prevention (Subpart C), Contingency Plans and Emergency

1 Procedures (Subpart D), Releases from Solid Waste Management Units (Subpart F), Closure and
2 Post-Closure (Subpart G), Financial Requirements (Subpart H), Surface Impoundments (Subpart
3 K), Waste Piles (Subpart L), Land Treatment (Subpart M), Landfills (Subpart N), and
4 Miscellaneous Units (Subpart X).

5 7. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits citizen suits against
6 any person alleged to be in violation of any permit, standard, regulation, condition, requirement,
7 prohibition, or order in effect pursuant to the RCRA. RCRA § 7002(a)(1)(B), 42 U.S.C. §
8 6972(a)(1)(B) permits citizen suits to enjoin the handling, storage, treatment, transportation
9 and/or disposal of hazardous or solid waste which creates or may create an imminent and
10 substantial endangerment to human health or the environment. Pursuant to RCRA §§ 3008(a),
11 3008(g) and 7002(a), 42 U.S.C. §§ 6928(a), 6928(g) and 6972(a), each violation of the RCRA
12 subjects the violator to a penalty of up to \$37,500.00 per day/per violation for violations
13 occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition,
14 the RCRA provides for injunctive relief pursuant to RCRA §§ 3008(a) and 7002(a), 42 U.S.C.
15 §§ 6928(a) and 6972(a).

16 8. This is also a citizens' suit for relief brought by PLAINTIFF under the Clean
17 Water Act (hereafter, "CWA,") 33 U.S.C. § 1251 *et seq.*, specifically 33 U.S.C. § 1311, 33
18 U.S.C. § 1342, and 33 U.S.C. § 1365, to stop DEFENDANTS from repeated and ongoing
19 violations of the CWA. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future
20 violations, the imposition of civil penalties, and other relief for DEFENDANTS' violations of
21 the CWA. These violations are detailed in the Notice of Violations and Intent to File Suit
22 (hereafter, "CWA NOTICE") made part of the pleadings of this case and attached hereto as
23 EXHIBIT B. DEFENDANTS are either discharging pollutants from a point source without a
24 National Pollutant Discharge Elimination System ("NPDES") permit in violation of 33 U.S.C.
25 § 1311(a), discharging storm water without a NPDES permit in violation of 33 U.S.C. § 1342(p)
26 or are routinely violating the terms of the NPDES permits ("PERMITS") which regulate
27 stormwater discharges.

1 9. CWA § 402, 33 U.S.C. § 1342 requires dischargers to obtain a NPDES permit to
2 discharge any pollutant into waters of the United States.

3 10. CWA § 301(a), 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant unless
4 in compliance with various enumerated sections of the CWA including CWA § 402, 33 U.S.C.
5 § 1342. The CWA provides for injunctive relief pursuant to CWA §§ 309(a) and 505(d), 33
6 U.S.C. §§ 1319(a) and 1365(d).

7 11. CWA § 301(a), 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant into
8 waters of the United States, unless such discharge is in compliance with various enumerated
9 sections of the CWA. Among other things, Section 301(a) prohibits discharges not authorized
10 by, or in violation of, the terms of a NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C.
11 § 1342.

12 12. CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm
13 water discharges under the NPDES program. States with approved NPDES permit programs are
14 authorized by Section 402(p) to regulate storm water discharges through permits issued to
15 dischargers and/or through the issuance of a single, statewide general permit applicable to all
16 storm water dischargers.

17 13. Pursuant to CWA § 402, 33 U.S.C. § 1342 the Administrator of the United States
18 Environmental Protection Agency ("EPA") has authorized California's State Water Resources
19 Control Board ("SWRCB") to issue NPDES permits including general NPDES permits in
20 California. The SWRCB elected to issue a statewide general permit for industrial discharges;
21 issued the General Permit on or about November 19, 1991; modified the General Permit on or
22 about September 17, 1992; and, reissued the General Permit on or about April 17, 1997 pursuant
23 to CWA § 402(p), 33 U.S.C. § 1342(p).

24 14. In order to discharge storm water lawfully in California, industrial dischargers
25 must comply with the terms of the General Permit or must have obtained and complied with an
26 individual NPDES permit.

1 15. The General Permit contains certain absolute prohibitions. Discharge Prohibition
2 A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm
3 water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit,
4 to the waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits
5 storm water discharges and authorized non-storm water discharges that cause or threaten to
6 cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the General
7 Permit prohibits storm water discharges to any surface or groundwater that adversely impact
8 human health or the environment. Receiving Water Limitation C(2) of the General Permit
9 prohibits storm water discharges that cause or contribute to an exceedance of any applicable
10 water quality standards contained in a Statewide Water Quality Control Plan or the applicable
11 Regional Board's Basin Plan.

12 16. In addition to absolute prohibitions, the General Permit contains a variety of
13 substantive and procedural requirements that dischargers must meet. Facilities discharging, or
14 having the potential to discharge storm water associated with industrial activity, and that have
15 not obtained an individual NPDES permit, must apply for coverage under the State's General
16 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing dischargers
17 to file their NOIs before March 30, 1992.

18 17. Dischargers must also develop and implement a Storm Water Pollution Prevention
19 Plan ("SWPPP"). The SWPPP must comply with the standards of Best Available Technology
20 Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology
21 ("BCT"). The General Permit requires that an initial SWPPP must have been developed and
22 implemented before October 1, 1992. The SWPPP must, among other requirements, identify
23 and evaluate sources of pollutants associated with industrial activities which may affect the
24 quality of storm and non-storm water discharges from a facility, and identify and implement site-
25 specific best management practices ("BMPs") to reduce or prevent pollutants associated with
26 industrial activities in storm water and authorized non-storm water discharges (Section A(2)).
27 The BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include: a

1 description of individuals and their responsibilities for developing and implementing the SWPPP
2 (Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow
3 pattern and nearby water bodies, the location of the storm water collection, conveyance and
4 discharge system, structural control measures, impervious areas, areas of actual and potential
5 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
6 handled and stored at the site (Section A(5)); a description of potential pollutant sources
7 including industrial processes, material handling and storage areas, dust and particulate
8 generating activities; a description of significant spills and leaks; a list of all non-storm water
9 discharges and their sources; and, a description of locations where soil erosion may occur
10 (Section A(6)). The SWPPP must include an assessment of potential pollutant sources at the
11 facility and a description of the BMPs to be implemented at the facility which will reduce or
12 prevent pollutants in storm water discharges and authorized non-storm water discharges,
13 including structural BMPs where non-structural BMPs are not effective (Section A(7),(8)). The
14 SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (Section
15 A(9),(10)).

16 18. The General Permit requires dischargers to eliminate all non-storm water
17 discharges to storm water conveyance systems other than those specifically set forth in Special
18 Condition D(1)(a) of the General Permit, and meeting each of the conditions set forth in Special
19 Condition D(1)(b).

20 19. The General Permit requires dischargers commencing activities before October
21 1, 1992 to develop and implement an adequate written Monitoring and Reporting Program no
22 later than October 1, 1992. Existing facilities covered under the General Permit must implement
23 all necessary revisions to their monitoring programs no later than August 1, 1997.

24 20. As part of the monitoring program, dischargers must identify all storm water
25 discharge locations which produce a significant storm water discharge, evaluate the effectiveness
26 of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out
27 in the SWPPP are adequate and properly implemented. Dischargers must conduct visual
28

1 observations of these discharge locations for at least one storm per month during the wet season
2 (October through May) and record their findings in Annual Report. Dischargers must also
3 collect and analyze storm water samples from at least two storms per year. Section B(5)(a) of
4 the General Permit requires that dischargers, "shall collect storm water samples during the first
5 hour of discharge from (1) the first storm event of the wet season, and (2) at least one other
6 storm event in the wet season. All storm water discharge locations shall be sampled.". Section
7 B(5)(c)(i) requires dischargers to sample and analyze during the wet season for basic parameters,
8 such as pH, total suspended solids, electrical conductance, and total organic content or oil &
9 grease, and certain industry-specific parameters. Section B(5)(c)(ii) requires dischargers to
10 sample for toxic chemicals and other pollutants likely to be in the storm water discharged from
11 the facility. Dischargers must also conduct dry season visual observations to identify sources
12 of non-storm water pollution. Section B(7)(a) indicates the visual observations and samples
13 must represent the "quality and quantity of the facility's storm water discharges from the storm
14 event." Section B(7)(c) requires, "if visual observation and sample collection locations are
15 difficult to observe or sample... facility operators shall identify and collect samples from other
16 locations that represent the quality and quantity of the facility's storm water discharges from the
17 storm event".

18 21. Section B(14) of the General Permit requires dischargers to submit an "Annual
19 Report" by July 1 of each year to the executive officer of the relevant Regional Board. The
20 Annual Report must be signed and certified by an appropriate corporate officer. (Sections B(14),
21 C(9), (10.) Section A(9)(d) of the General Permit requires the dischargers to include in their
22 annual report an evaluation of their storm water controls, including certifying compliance with
23 the General Permit. (See also Sections C(9), C(10) and B(14.)

24 22. CWA §§ 505(a)(1) and 505(f), 33 U.S.C. §§1365(a)(1) and (f), §1362(5) provide
25 for citizen enforcement actions against any "person" including individuals, corporations, or
26 partnerships, for violations of NPDES permit requirements and unpermitted discharges of
27 pollutants. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).

1 Violators of the CWA are subject to an assessment of civil penalties of up to \$32,500.00 per
2 day/per violation for all violations occurring through January 12, 2009, and \$37,500.00 per
3 day/per violation for all violations occurring after January 12, 2009, pursuant to CWA §§ 309(d)
4 and 505, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

5 23. The EPA has established Parameter Benchmark Values as guidelines for
6 determining whether a facility discharging storm water has implemented the requisite BAT and
7 BCT. See 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000).

8 24. The Regional Water Quality Control Board has established water quality standards
9 for the North Coast Region. This water quality control plan is generally referred to as the Basin
10 Plan. The Basin Plan includes a narrative toxicity standard and a narrative oil and grease
11 standard. The Basin Plan provides that waters shall not contain materials in concentrations which
12 cause nuisance or adversely affect beneficial uses. The Basin Plan establishes limits on metals,
13 solvents, pesticides and other hydrocarbons.

14 II. PARTIES

15 25. Plaintiff NORTHERN CALIFORNIA RIVER WATCH is a 501(c)(3) non-profit,
16 public benefit environmental organization dedicated to the protection and preservation of surface
17 waters and groundwaters in northern California. Its principal offices are located at 500 North
18 Main Street, Suite 110, Sebastopol, California.

19 26. Defendant, ECODYNE CORPORATION was, and at all times herein mentioned,
20 is a corporation headquartered in Chicago, Illinois, registered with the State of California and
21 doing business within the State of California.

22 27. Defendants DOES 1 - 30, Inclusive, respectively, are persons, partnerships,
23 corporations or entities, who are, or were, responsible for, or in some way contributed to, the
24 violations which are the subject of this Complaint or are, or were, responsible for the
25 maintenance, supervision, management, operations, or insurance coverage of DEFENDANTS'
26 facilities or operations on the site as identified herein. The names, identities, capacities, or
27 functions of DEFENDANTS DOES 1 - 30, Inclusive are presently unknown to PLAINTIFF.

1 PLAINTIFF shall seek leave of court to amend this Complaint to insert the true names of said
2 DOES Defendants when the same have been ascertained.

3 III. JURISDICTIONAL ALLEGATIONS

4 28. Subject matter jurisdiction is conferred upon this Court by RCRA § 7002(a)(1),
5 42 U.S.C. § 6972(a)(1), which states in part,

6 "... any person may commence a civil action on his own behalf (A) against any
7 person ... who is alleged to be in violation of any permit, standard, regulation,
8 condition requirement , prohibition or order which has become effective
9 pursuant to this chapter, or (B) against any person ... who has contributed or
10 who is contributing to the past or present handling, storage, treatment,
11 transportation or disposal of any solid or hazardous waste which may present an
12 imminent and substantial endangerment to health or the environment."

13 29. PLAINTIFF's members reside in the vicinity of, derive livelihoods from, own
14 property near, or recreate on, in or near or otherwise use, enjoy and benefit from the watersheds,
15 land, rivers, and associated natural resources into which DEFENDANTS pollute, or by which
16 DEFENDANTS' operations adversely affect those members' interests, in violation of RCRA
17 § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) and RCRA § 7002 (a)(1)(B), 42 U.S.C. §
18 6972(a)(1)(B). The health, economic, recreational, aesthetic or environmental interests of
19 PLAINTIFF's members have been, are being, and will continue to be adversely affected by
20 DEFENDANTS' unlawful violations as alleged herein. PLAINTIFF contends there exists an
21 injury in fact, causation of that injury by the DEFENDANTS' complained of conduct, and a
22 likelihood that the requested relief will redress that injury.

23 30. Pursuant to RCRA § 7002(2)(A), 42 U.S.C. § 6972(2)(A), PLAINTIFF gave
24 statutory notice of the RCRA violations alleged in this Complaint prior to the commencement
25 of this lawsuit to: (a) Defendant ECODYNE CORPORATION, (b) the United States
26 Environmental Protection Agency, both Federal and Regional, (c) the State of California Water
27 Resources Control Board, and (d) the State of California Integrated Waste Management Board.

1 31. Pursuant to RCRA §§ 7002(a) and (b), 42 U.S.C. §§ 6972(a) and (b) venue lies
2 in this District as the sites and operations under DEFENDANTS' ownership or control and
3 where illegal activities occurred which are the source of the violations complained of in this
4 action are located within this District.

5 32. Subject matter jurisdiction is also conferred upon this Court by CWA § 505(a)(1),
6 33 U.S.C. § 1365(a)(1), which states in part that,

7 "any citizen may commence a civil action on his own behalf against any person
8who is alleged to be in violation of (A) an effluent standard or limitation
9or (B) an order issued by the Administrator or a State with respect to such
10 a standard or limitation." For purposes of CWA § 505, "the term 'citizen'
11 means a person or persons having an interest which is or may be adversely
12 affected."

13 33. PLAINTIFF's members reside in the vicinity of, derive livelihoods from, own
14 property near, or recreate on, in or near or otherwise use, enjoy and benefit from the watersheds,
15 land, rivers, and associated natural resources into which DEFENDANTS pollute, or by which
16 DEFENDANTS' operations adversely affect those members' interests, in violation of CWA §
17 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), and CWA § 402, 33
18 U.S.C. § 1342. The health, economic, recreational, aesthetic and environmental interests of
19 PLAINTIFF's members may be, have been, are being, and will continue to be adversely affected
20 by DEFENDANTS' unlawful violations as alleged herein. PLAINTIFF contends there exists
21 an injury in fact to PLAINTIFF and its members, causation of that injury by DEFENDANTS'
22 complained of conduct, and a likelihood that the requested relief will redress that injury.

23 34. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), PLAINTIFF gave
24 statutory notice of the CWA violations alleged in this Complaint to: (a) Defendant ECODYNE
25 CORPORATION, (b) the United States Environmental Protection Agency (Federal and
26 Regional), and (c) the State of California Water Resources Control Board.

35. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint has been served on the United States Attorney General and the Administrator of the Federal EPA.

36. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the sites and operations under DEFENDANTS' ownership or control and where illegal activities occurred which are the source of the violations complained of in this action are located within this District.

IV. STATEMENT OF FACTS

37. PLAINTIFF is informed and believes, and on said information and belief alleges that DEFENDANTS are past or present generators, past or present transporters, or past or present owners or operators of the sites identified in the RCRA NOTICE and CWA NOTICE (hereafter referred to as "the Sites,") and have contributed or are contributing to the past or present handling, storage, treatment, transportation, or disposal of solid or hazardous waste which may present an imminent or substantial endangerment to human health or the environment. Furthermore, DEFENDANTS' handling, use, transport, treatment, storage or disposal of waste at the Sites has violated and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to the RCRA regarding hazardous or solid waste. (42 U.S.C. §§ 6972(a)(1)(A) and (B)). DEFENDANTS have no RCRA-authorized permits authorizing the activities related to hazardous wastes described in the RCRA NOTICE.

38. Regulatory agencies have designated surface and groundwaters in this area of California as capable of supporting multiple beneficial uses including domestic, agricultural and industrial water supply, recreation, habitat, fishing and the like and have established Maximum Contaminant Levels ("MCLs") and Water Quality Objectives ("WQOs") for these pollutants in surface waters and groundwaters.

39. The pollutants identified in the RCRA NOTICE and CWA NOTICE are known carcinogens or reproductive toxins, and have been listed chemicals under Proposition 65.

1 Surface waters and groundwaters at and around the Sites are potential sources of drinking water
2 under the applicable Basin Plan. PLAINTIFF is informed and believes, and on said information
3 and belief alleges that DEFENDANTS in the course of doing business have discharged and
4 continue to discharge pollutants to surface waters and groundwaters at and around the Sites as
5 discussed in the RCRA NOTICE and CWA NOTICE .

6 40. DEFENDANTS' handling, use, transport, treatment, storage or disposal of
7 pollutants at the Sites has occurred in a manner which has allowed significant quantities of
8 hazardous constituents to be discharged to soil, groundwater and surface waters beneath and
9 around the Sites and adjacent properties, as well as off site.

10 41. To date, the levels of pollutants at the Sites remain high above the allowable MCLs
11 or WQOs for said constituents, creating an imminent and substantial endangerment to public
12 health or the environment.

13 42. PLAINTIFF is informed and believes and on information and belief alleges that
14 the activities of DEFENDANTS as alleged in the RCRA NOTICE and CWA NOTICE have
15 been both knowing or intentional; that DEFENDANTS have discharged or are intentionally and
16 illegally continuing to discharge hazardous waste in violation of the RCRA and the CWA.
17 Further, that DEFENDANTS have known of the contamination at the Sites for at least 20 or
18 more years, or are also aware that continuing discharges or failure to remediate the pollution
19 allows the contamination to migrate through the ground or groundwater at or adjacent to said
20 Sites, or to continually contaminate or re-contaminate actual or potential sources of drinking
21 water.

22 43. The CWA regulates the discharge of pollutants into navigable waters. The statute
23 is structured in such a way that all discharge of pollutants is prohibited with the exception of
24 several enumerated statutory exceptions. One such exception authorizes a polluter who has been
25 issued a NPDES permit pursuant to the CWA, to discharge designated pollutants at certain
26 levels subject to certain conditions. Without a NPDES permit **all surface and subsurface**
27 discharges from DEFENDANTS to waters of the United States are illegal.

1 44. PLAINTIFF is informed and believes and on information and belief alleges
 2 DEFENDANTS are discharging pollutants from the Sites and various point sources within the
 3 Sites to waters of the State or United States without a NPDES permit allowing said discharge
 4 of pollutants as required by CWA § 301(a), 33 U.S.C. § 1311(a) and CWA §§ 402(a) and
 5 402(b), 33 U.S.C. § 1342(a) and 1342(b) as well as CWA § 402(p), 33 U.S.C. 1342(p). The
 6 CWA prohibits storm water discharges without a permit (33 U.S.C. § 1342; 40 CFR § 122.26).

7 45. The liability of DEFENDANTS stems from their current or past ownership or
 8 operation of the Sites, or due to the activities conducted on the Sites by DEFENDANTS, their
 9 subsidiaries, contractors, employees or agents.

10 46. The CWA is a strict liability statute with a five year statute of limitations. The
 11 range of dates covered in the CWA NOTICE is the five year statute of limitations as discussed
 12 therein.

13 47. The majority of the violations identified in the CWA NOTICE such as discharging
 14 pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES
 15 permit, failure to implement the requirements of the CWA, failure to meet water quality
 16 objectives, etc., are continuous, and therefore each day is a violation. PLAINTIFF alleges that
 17 all violations set forth in the CWA NOTICE are continuing in nature or will likely continue after
 18 the filing of this Complaint. Specific dates of violations are evidenced in DEFENDANTS' own
 19 records (or lack thereof) or files and records of other regulatory agencies including the Regional
 20 Board, GeoTracker, Sonoma County Health and local police and fire departments.

21 **V. FIRST CLAIM FOR RELIEF**
 22 **Violation of Any Permit, Standard, Regulation, Condition, Requirement, Prohibition,**
 23 **or Order**
42 U.S.C. § 6972(a)(1)(A)

24 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 47
 25 including EXHIBIT A as though fully set forth herein. PLAINTIFF is informed and believes,
 26 and based on such information and belief alleges:

1 48. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A), provides that any person may
2 commence a civil action against any person or governmental entity alleged to be in violation of
3 any permit, standard, regulation, condition, requirement, prohibition, or order which has become
4 effective pursuant to the RCRA. Civil penalties may be assessed against any person or entity
5 in violation of such permits, etc. pursuant to the RCRA under the provisions of 42 U.S.C. §§
6 6928 (a) or (g).

7 49. PLAINTIFF alleges DEFENDANTS have failed to comply with the statutory or
8 regulatory prevention, detection, monitoring, or remediation requirements imposed under the
9 RCRA as described in the RCRA NOTICE.

10 50. PLAINTIFF alleges DEFENDANTS have no permit issued under the RCRA or
11 by the State of California for the use, handling, storage, transportation, disposal or treatment of
12 hazardous or solid waste at the Sites.

13 51. PLAINTIFF alleges DEFENDANTS' operations at the Sites include unlawful
14 open dumping as that term is used in the RCRA, by discharging pollutants to the open ground
15 allowing the pollutants to discharge to both groundwater or surface waters. The Sites neither
16 qualify as landfills under 42 U.S.C. § 6944, or as facilities for the disposal of hazardous waste.

17 52. PLAINTIFF alleges DEFENDANTS are in violation of RCRA Subtitle C,
18 subchapter III, (42 U.S.C. § 6921 *et seq.*), by failing to properly identify, label or list hazardous
19 materials; failing to keep records of their hazardous waste activities including their use,
20 handling, storage, transportation or treatment of hazardous or solid waste; failing to take proper
21 measures to protect human health or the environment; failing to monitor their activities; or,
22 failing to acquire necessary RCRA-authorized permits for the discharge of pollutants from the
23 Sites.

24 53. PLAINTIFF alleges DEFENDANTS have in the past or are now knowingly
25 transporting, treating, storing, disposing of or exporting hazardous waste identified or listed
26 under RCRA Subtitle C, subchapter III, (42 U.S.C. § 6921 *et seq.*), thereby placing persons in
27 imminent danger of death or serious bodily injury.

1 54. PLAINTIFF is informed and believes and on such belief alleges that
2 DEFENDANTS' violation of any permit, standard, regulation, condition, requirement,
3 prohibition, or order which has become effective pursuant to RCRA § 7002(a)(1)(A) has
4 occurred every day since at least May 1, 2005, or on numerous separate occasions, and that those
5 violations are continuing.

6 55. Continuing activities by DEFENDANTS as alleged herein irreparably harm
7 PLAINTIFF's members, for which harm PLAINTIFF has no plain, speedy or adequate remedy
8 at law.

9 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
10 hereafter.

11 **VI. SECOND CLAIM FOR RELIEF**
12 **Imminent and Substantial Endangerment to Health or to the Environment**
13 **42 U.S.C. § 6972(a)(1)(B)**

14 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 55
15 including EXHIBIT A as though fully set forth herein. PLAINTIFF is informed or believes, and
16 based on such information and belief alleges as follows:

17 56. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) provides that any person may
18 commence a civil action against any person or governmental entity including a past or present
19 generator, transporter, owner or operator of a treatment, storage or disposal facility who has
20 contributed to the past or present storage, treatment, transportation, or disposal of any solid or
21 hazardous waste which may present an imminent and substantial endangerment to health or to
22 the environment. Civil penalties may be assessed against any person or entity in violation of this
23 section, under the provisions of 42 U.S.C. §§ 6928 (a) or (g).

24 57. The pollutants identified in the RCRA NOTICE are known carcinogens or
25 reproductive toxins, or when released into the environment in sufficient quantity pose an
26 imminent or substantial risk to public health or to the environment in general.

1 58. PLAINTIFF alleges the amounts of pollutants used, handled, stored, transported,
2 disposed of or treated by DEFENDANTS at the Sites is in sufficient quantity to pose an
3 imminent or substantial risk to both the environment or to human health.

4 59. PLAINTIFF alleges DEFENDANTS are of the class of entities covered by 42
5 U.S.C. § 6972(a)(1)(B), and are past or present generators, past or present transporters, or past
6 or present owners or operators of a treatment, storage, or disposal facility, which has contributed
7 or is contributing to the past or present storage, treatment, transportation, or disposal of any solid
8 or hazardous waste which may present an imminent and substantial endangerment to health or
9 the environment.

10 60. PLAINTIFF alleges DEFENDANTS are in violation of RCRA Subtitle C,
11 subchapter III, (42 U.S.C. § 6921 *et seq.*), by failing to properly identify, label or list hazardous
12 materials; failing to keep records of their hazardous waste activities including their use,
13 handling, storage, transportation or treatment of hazardous or solid waste; failing to take proper
14 measures to protect human health or the environment; failing to monitor their activities; or,
15 failing to acquire RCRA-authorized permits for said activities. DEFENDANTS' violations of
16 RCRA Subtitle C, subchapter III, (42 U.S.C. § 6921 *et seq.*), presents an imminent and
17 substantial risk to both the environment or to human health.

18 61. PLAINTIFF alleges DEFENDANTS' knowing transport, treatment, storage,
19 disposal or export of hazardous waste identified or listed under RCRA Subtitle C, subchapter
20 III, (42 U.S.C. § 6921 *et seq.*), places persons in imminent danger of death or serious bodily
21 injury.

22 62. PLAINTIFF alleges that continuing acts or failure to act by DEFENDANTS to
23 address the violations described above will irreparably harm PLAINTIFF's members for which
24 harm PLAINTIFF has no plain, speedy or adequate remedy at law.

25 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
26 hereafter.

1 **VII. THIRD CLAIM FOR RELIEF**
2 **Violation of Any Permit, Standard, Regulation, Condition, Requirement Prohibition, or**
3 **Order**
4 **42 U.S.C. § 6972(a)(1)(A)**
5 **Creating Imminent and Substantial Endangerment to Health or to the Environment**
6 **42 U.S.C. § 6972(a)(1)(B)**
7 **Specifically: Violation of Procedural and Substantive Requirements of RCRA**
8 **42 U.S.C. § 6924**

9 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 62
10 including EXHIBIT A as though fully set forth herein. PLAINTIFF is informed or believes, and
11 based on such information or belief alleges as follows:

12 63. PLAINTIFF alleges DEFENDANTS have failed to comply with any of the
13 procedural and substantive requirements of RCRA § 3004, 42 U.S.C. § 6924 which are
14 enumerated in 40 C.F.R. Part 264 and include requirements for General Facility Standards
15 (Subpart B), Preparedness and Prevention (Subpart C), Contingency Plans and Emergency
16 Procedures (Subpart D), Releases from Solid Waste Management Units (Subpart F), Closure and
17 Post-Closure (Subpart G), Financial Requirements (Subpart H), Surface Impoundments (Subpart
18 K), Waste Piles (Subpart L), Land Treatment (Subpart M), Landfills (Subpart N), and
19 Miscellaneous Units (Subpart X); and, are therefore in violation of RCRA § 3004, 42 U.S.C. §
20 6924.

21 64. PLAINTIFF is informed and believes and on such belief alleges that
22 DEFENDANTS' handling, treatment, storage, transportation, and/or disposal of their hazardous
23 waste in violation of RCRA § 3004 has occurred every day since at least May 1, 2005, or on
24 numerous separate occasions, and that those violations are continuing.

25 65. Continuing activities by DEFENDANTS as alleged herein irreparably harm
26 PLAINTIFF's members, for which harm PLAINTIFF has no plain, speedy or adequate remedy
27 at law.

28 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
hereafter.

VIII. FOURTH CLAIM FOR RELIEF

Violation of Any Permit, Standard, Regulation, Condition, Requirement, Prohibition, or Order

42 U.S.C. § 6972(a)(1)(A)

Creating Imminent and Substantial Endangerment to Health or to the Environment

42 U.S.C. § 6972(a)(1)(B)

Specifically: Unpermitted Handling, Treatment, Storage, Transportation and/or Disposal of Hazardous Waste

42 U.S.C. § 6925

PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 65 including EXHIBIT A as though fully set forth herein. PLAINTIFF is informed or believes, and based on such information or belief alleges as follows:

66. PLAINTIFF alleges DEFENDANTS have installed and maintained a system of conveyances to dispose of the hazardous generated and released the Sites.

67. PLAINTIFF alleges DEFENDANTS' deposition and maintenance of hazardous waste as described herein and in the RCRA NOTICE has caused and continues to cause the generation and discharge to the environment of hazardous waste.

68. PLAINTIFF alleges DEFENDANTS do not possess permits authorized by either RCRA or the State of California for the handling, storage, treatment, transportation, and/or disposal of their hazardous or solid waste at the Sites.

69. PLAINTIFF alleges DEFENDANTS' unpermitted handling, storage, treatment, transportation and/or disposal of their hazardous waste is in violation of RCRA § 3005, 42 U.S.C. § 6925.

70. PLAINTIFF is informed and believes and on such belief alleges that DEFENDANTS' handling, treatment, storage, transportation, and/or disposal of their hazardous waste in violation of RCRA § 3004 has occurred every day since at least May 1, 2005, or on numerous separate occasions, and that the violations are continuing.

71. Continuing activities by DEFENDANTS as alleged herein irreparably harm PLAINTIFF's members for which harm PLAINTIFF has no plain, speedy or adequate remedy at law.

1 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
2 hereafter.

3 **IX. FIFTH CLAIM FOR RELIEF**
4 **Violation of Any Permit, Standard, Regulation, Condition, Requirement, Prohibition,**
5 **or Order**
6 **42 U.S.C. § 6972(a)(1)(A)**
7 **Creating Imminent and Substantial Endangerment to Health or to the Environment**
8 **42 U.S.C. § 6972(a)(1)(B)**
9 **Specifically: Prohibition Against Open Dumping**
10 **42 U.S.C. § 6945**

11 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 71
12 including EXHIBIT A as though fully set forth herein. PLAINTIFF is informed or believes, and
13 based on such information or belief alleges as follows:

14 72. PLAINTIFF alleges DEFENDANTS have engaged in open dumping by their
15 discharge of hazardous waste to open ground where it will contaminate and has contaminated
16 the soils, groundwater and surface waters including Pruitt Creek and the Russian River and its
17 tributaries as described more fully in the RCRA NOTICE.

18 73. The Sites neither qualify as landfills under 42 U.S.C. § 6944, nor as facilities for
19 the disposal of hazardous waste.

20 74. PLAINTIFF alleges DEFENDANTS have no RCRA-authorized permit for
21 disposal, storage or treatment of solid or hazardous waste of the type currently and historically
22 discharged at the Sites.

23 75. PLAINTIFFS are informed and believe and on such belief allege that
24 DEFENDANTS' open dumping in violation of RCRA § 4005 has occurred every day since at
25 least May 1, 2005, or on numerous separate occasions, and that the violations are continuing.

26 76. Continuing activities by DEFENDANTS as alleged herein irreparably harm
27 PLAINTIFF's for which harm PLAINTIFF has no plain, speedy or adequate remedy at law.

28 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
hereafter.

X. SIXTH CLAIM FOR RELIEF
Discharge of Pollutants from a Point Source
33 U.S.C. § 1342 (a) and (b), 33 U.S.C. § 1311

PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 76 including EXHIBIT B as though fully set forth herein. PLAINTIFF is informed or believes, and based on such information or belief alleges as follows:

77. PLAINTIFF alleges DEFENDANTS have violated and continue to violate the CWA as evidenced by the discharges of pollutants from a point source without a NPDES permit in violation of CWA § 301, 33 U.S.C. § 1311.

78. PLAINTIFF alleges the violations of DEFENDANTS are ongoing and will continue after the filing of this Complaint. PLAINTIFF further alleges herein all violations of the CWA which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by DEFENDANTS to the Regional Water Quality Control Board or to PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will file additional amended complaints if necessary to address DEFENDANTS' State and Federal violations which may occur after the filing of this Complaint. Each of DEFENDANTS' violations is a separate violation of the CWA.

79. PLAINTIFF alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief DEFENDANTS will continue to violate the CWA with respect to the enumerated discharges and releases identified in this Complaint and in the CWA NOTICE. Further, that the relief requested in this Complaint will redress the injury to PLAINTIFF's members, prevent future injury, and protect the interests of PLAINTIFF's members which interests are or may be adversely affected by DEFENDANTS' violations of the CWA.

Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth hereafter.

XI. SEVENTH CLAIM FOR RELIEF
Discharges of Stormwater Pollutants Without an NPDES Permit
33 U.S.C. § 1311(a), 33 U.S.C. § 1342(p)

PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 79 including EXHIBIT B as though fully set forth herein. PLAINTIFF is informed or believes, and based on such information or belief alleges as follows:

80. CWA § 301(a), 33 U.S.C. § 1331(a) prohibits the discharge of any non-storm water pollutant from any point source to waters of the United States, except for discharges in compliance with a NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p).

81. PLAINTIFF alleges DEFENDANTS discharge non-storm water pollutants from the Sites into surface waters through storm water discharges.

82. PLAINTIFF alleges, that for at least five years from May 1, 2005, DEFENDANTS have discharged and continue to discharge pollutants without having obtained a NPDES permit as required by CWA § 301(a), 33 U.S.C. §§ 1311(a) as more fully described in the CWA NOTICE.

83. PLAINTIFF alleges that from the time that DEFENDANTS began operations at the Sites through the present time, DEFENDANTS have operated without individual NPDES permit coverage for their polluted storm water discharges, in violation of CWA §§ 301(a) and 402(p)(2)(B), 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Therefore, polluted storm water discharges from the Sites are unlawful discharges of pollutants from point sources into waters of the United States within the meaning of CWA § 301, 33 U.S.C. § 1311.

84. PLAINTIFF further alleges these violations are not wholly past violations, are capable of repetition, and are therefore enforceable in this citizen suit action, because, inter alia, these violations and other ongoing and continuous violations result from the same underlying, and inadequately resolved, causes.

//

//

1 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
2 hereafter.

3 **XII. EIGHTH CLAIM FOR RELIEF**

4 **Failure to File NOI**
5 **33 U.S.C. §§ 1311(a), 1342**

6 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 84
7 including EXHIBIT B as though fully set forth herein. PLAINTIFF is informed or believes, and
8 based on such information or belief alleges as follows:

9 85. PLAINTIFF alleges, that for at least five years from May 1, 2005, DEFENDANTS
10 have discharged and continue to discharge pollutants without having filed an NOI with the State
11 Board and/or Regional Water Quality Control Board consistent with the requirements of the
12 General Permit and CWA § 301(a), 33 U.S.C. §§ 1311(a), as more fully described in the CWA
13 NOTICE. Therefore, the polluted storm water discharges from the Sites are unlawful discharges
14 of pollutants from point sources into waters of the United States within the meaning of CWA
15 § 301, 33 U.S.C. § 1311. PLAINTIFF alleges further these violations are not wholly past
16 violations, are capable of repetition, and are therefore enforceable in this citizen suit action,
17 because, inter alia, these violations and other ongoing and continuous violations result from the
18 same underlying, and inadequately resolved, causes.

19 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
20 hereafter.

21 **XIII. NINTH CLAIM FOR RELIEF**
22 **Discharges of Contaminated Storm Water**
23 **33 U.S.C. §§ 1311(a), 1342**

24 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 85 and
25 EXHIBIT B as though fully set forth herein. PLAINTIFF is informed or believes, and based on
26 such information or belief alleges as follows:
27
28

1 86. Discharge Prohibition A(2) of the General Permit requires that storm water
2 discharges and authorized non-storm water discharges shall not cause or threaten to cause
3 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
4 General Permit require that storm water discharges and authorized non-storm water discharges
5 shall not adversely impact human health or the environment, and shall not cause or contribute
6 to a violation of any water quality standards contained in a Statewide Water Quality Control Plan
7 or the applicable Regional Board's Basin Plan.

8 87. PLAINTIFF alleges, that for at least five years from May 1, 2005, DEFENDANTS
9 have discharged and continue to discharge polluted storm water from the Sites directly to storm
10 drains that flow into surface waters, in violation of the General Permit. During every rain event,
11 rainwater flowing over or through polluted ground accumulates pollutants, becomes
12 contaminated and flows untreated from the Sites through the storm drain system and into
13 adjacent surface waters including Pruitt Creek and the Russian River and its tributaries, all
14 waters of the United States, as more fully described in the CWA NOTICE.

15 88. PLAINTIFF alleges these discharges of contaminated storm water are causing
16 pollution and contamination of the waters of the United States and are in excess of applicable
17 water quality standards in violation of Discharge Prohibition A(2) of the General Permit.

18 89. PLAINTIFF alleges that these discharges of contaminated storm water are
19 adversely affecting human health and the environment in violation of Receiving Water
20 Limitation C(1) of the General Permit.

21 90. PLAINTIFF alleges that these discharges of contaminated storm water are
22 contributing to the violation of the applicable water quality standards in the Statewide Water
23 Quality Control Plan and/or the applicable Basin Plan in violation of Receiving Water Limitation
24 C(2) of the General Permit.

25 91. PLAINTIFF alleges that every day for at least five years from May 1, 2005 on
26 which DEFENDANTS have discharged polluted storm water from the Sites is a violation of the
27 General Permit which is a separate and distinct violation of CWA § 301(a), 33 U.S.C. § 1311(a).

1 Further, that these violations are ongoing and continuous.

2 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
3 hereafter.

4 **XIV. TENTH CLAIM FOR RELIEF**
5 **Non-Storm Water Discharges**
6 **33 U.S.C. §§ 1311, 1342**

7 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 91
8 including EXHIBIT B as though fully set forth herein. PLAINTIFF is informed or believes, and
9 based on such information or belief alleges as follows:

10 92. General Permit Discharge Prohibition A(1) and Special Condition D(1) of the
11 General Permit prohibit discharges of material other than storm water (i.e., non-storm water
12 discharges) to a storm sewer system or waters of the United States, except under certain
13 specified circumstances. Unauthorized non-storm water discharges must be either separately
14 permitted or eliminated.

15 93. PLAINTIFF alleges that for at least five years from May 1, 2005, DEFENDANTS
16 have discharged and continue to discharge unauthorized non-storm water, including but not
17 limited to water used in industrial processes and to rinse or wash industrial materials at the Sites,
18 which then flows into storm drains and adjacent surface waters in violation of the General
19 Permit, as more fully described in the CWA NOTICE.

20 94. Every day DEFENDANTS fail to address these non-storm water discharges from
21 the Sites in violation of the General Permit is a separate day of violation of the CWA.

22 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
23 hereafter.

24 //

25 //

26 //

27

28

XV. ELEVENTH CLAIM FOR RELIEF
Failure to Develop and Implement Adequate SWPPP
33 U.S.C. §§ 1311, 1342

PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 94 including EXHIBIT B as though fully set forth herein. PLAINTIFF is informed or believes, and based on such information or belief alleges as follows:

95. PLAINTIFF alleges that each day for at least five years from May 1, 2005, DEFENDANTS have failed to develop and implement an adequate SWPPP for the Sites as required under Section A of the General Permit. Further, that DEFENDANTS' ongoing failure to develop and implement an adequate SWPPP is evidenced by, inter alia, DEFENDANTS' failure to apply BMPs; the continued exposure of significant quantities of industrial material to storm water flows; failure to either treat storm water prior to discharge or to implement effective containment practices; and, the continued discharge of storm water pollutants and non-storm water discharges from the Sites, as more fully described in the CWA NOTICE.

Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth hereafter.

XVI. TWELFTH CLAIM FOR RELIEF
Failure to Develop and Implement an Adequate Monitoring and Reporting Program
33 U.S.C. §§ 1311, 1342

PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 95 including EXHIBIT B as though fully set forth herein. PLAINTIFF is informed or believes, and based on such information or belief alleges as follows:

96. Section B of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement a monitoring and reporting program (including, inter alia, sampling and analysis of discharges) no later than October 1, 1992.

97. PLAINTIFF alleges DEFENDANTS have failed to develop and implement adequate monitoring and reporting programs for the Sites, in violation of Section B of the

1 General Permit, as evidenced by, inter alia, DEFENDANTS' failure to collect and analyze
2 samples from all storm water discharge locations on the Sites, as more fully described in the
3 CWA NOTICE.

4 98. PLAINTIFF alleges that each day for at least five years from May 1, 2005 on
5 which that DEFENDANTS have failed to develop and implement an adequate monitoring and
6 reporting program for the Sites is a separate and distinct violation of CWA § 301(a), 33 U.S.C.
7 § 1311(a).

8 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
9 hereafter.

10 **XVII. THIRTEENTH CLAIM FOR RELIEF**
11 **Failure to File Annual Reports**
12 **33 U.S.C. §§ 1311, 1342**

13 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 98
14 including EXHIBIT B as though fully set forth herein. PLAINTIFF is informed or believes, and
15 based on such information or belief alleges as follows:

16 99. Section B(14) of the General Industrial Storm Water Permit requires dischargers
17 to submit an Annual Report by July 1st of each year to the executive officer of the relevant
18 Regional Board. The Annual Report must be signed and certified by an appropriate corporate
19 officer. Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger
20 to include in their Annual Report an evaluation of their storm water controls, including certifying
21 compliance with the General Industrial Storm Water Permit.

22 100. PLAINTIFF alleges DEFENDANTS have failed to submit Annual Reports to the
23 Regional Quality Control Board since they began ownership and/or operations at the Sites, and
24 at least for five years since May 1, 2005, as more fully described in the CWA NOTICE; and
25 further, that each instance of such failure is a separate and distinct violation of the General
26 Permit and CWA § 301(a), 33 U.S.C. § 1311(a).

1 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
2 hereafter.

3 **XVIII. FOURTEENTH CLAIM FOR RELIEF**
4 **Failure to Implement BAT and BCT**
5 **33 U.S.C. §§ 1311, 1342**

6 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 100
7 including EXHIBIT B as though fully set forth herein. PLAINTIFF is informed or believes, and
8 based on such information or belief alleges as follows:

9 101. PLAINTIFF alleges since DEFENDANTS began operations and/or ownership at
10 the Sites, or for at least five years since May 1, 2005, DEFENDANTS have failed to implement
11 BAT for toxic and non-conventional pollutants and BCT for conventional pollutants at the Sites
12 as described in the CWA NOTICE; and further, that each such failure is a separate and distinct
13 violation of the General Permit and CWA § 301(a), 33 U.S.C. § 1311(a).

14 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
15 hereafter.

16 **XIX. PRAYER FOR RELIEF**

17 PLAINTIFF prays this Court grant the following relief:

18 102. Declare DEFENDANTS to have violated and to be in violation of the RCRA for
19 discharging petroleum products and constituents which are known carcinogens and/or
20 reproductive toxins in sufficient quantities to pose an imminent and substantial risk to human
21 health and the environment;

22 103. Enjoin DEFENDANTS from discharging petroleum products and petroleum
23 constituents from the Sites, which petroleum products and constituents pose an imminent and
24 substantial risk to health and the environment;

25 104. Enjoin DEFENDANTS from continued violations of the RCRA;

26 105. Order DEFENDANTS to fully investigate the Sites which investigation shall
27 include:

- 1 a. Completion of Site Delineation, to include the characterization of the nature and
2 extent of all underground contaminant plume(s) and the nature and extent of any
3 commingled plumes which may be entering the Sites from offsite locations;
- 4 b. Comprehensive Sensitive Receptor Survey, to include an adjacent surface water
5 study, water supply survey, and building conduit survey;
- 6 c. Aquifer Profile Study, to include identification of all water bearing strata and
7 whether subsurface groundwater at the Sites is in communication with the other aquifers;
8 and, testing of all aquifers determined to be in communication with the contaminated soil
9 and groundwater zones for all known pollutants at the Sites;
- 10 d. Conduit/Preferential Pathway Study, to include identification of all conduits or
11 preferential pathways such as sand and gravel lenses, utility lines, underground pipes,
12 storm drains, roads, services and other potential pathways for contaminant migration.
13 Such conduits and preferential pathways found to have intersected the plume should be
14 tested for the presence of petroleum contaminants.
- 15 e. Identification and Testing of Water Supply Wells, to include a door-to-door
16 survey of potentially affected properties to determine the presence and location of any
17 water supply wells (whether permitted or not). Any water supply wells within the
18 potential range of the contaminant plumes to be tested for the presence of petroleum
19 contamination;
- 20 f. Surface Water Survey, to include a determination as to whether any surface waters
21 have been or have the potential of being contaminated from the Sites. All surface waters
22 and drainage within 1,500 feet of the outer extent of the plume to be tested; and,
- 23 h. Determination of Mass of Plume Constituents, to include mass of the plume and
24 masses of the various pollutants at the Sites, whether or not part of the plume.

25 106. Order DEFENDANTS to fully remediate the Sites reducing all contaminants of
26 concern in the groundwater to below WQOs within five (5) years;

1 107. Order DEFENDANTS to pay civil penalties to the United States on a per
2 violation/per day basis for the violations of RCRA as alleged herein;

3 108. Declare DEFENDANTS to have violated or to be in violation of the CWA;

4 109. Enjoin DEFENDANTS from continued violations of the CWA;

5 110. Order DEFENDANTS to fully remediate all of the damages caused by their
6 violations of the CWA;

7 111. Order DEFENDANTS to pay civil penalties on a per violation per day basis for
8 their violations of the CWA;

9 112. Order DEFENDANTS to pay PLAINTIFF'S reasonable attorneys' fees and costs
10 (including expert witness fees), as provided by law; and,

11 113. Grant such other or further relief as may be just or proper.
12

13 DATED: November 8, 2010

LAW OFFICE OF JACK SILVER

14
15 By: 

16 Jack Silver

17 Attorney for Plaintiff

18 NORTHERN CALIFORNIA RIVER WATCH
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



May 3, 2010

Via Registered Mail - Return Receipt Requested

Avendt Group, Inc.
Raymond J. Avendt - Registered Agent
11149 Pine Needle Drive
Brighton, MI 48114

The Marmon Group LLC
Illinois Corporation Service Co. - Registered Agent
801 Adlai Stevenson Drive
Springfield, IL 62703

Ecodyne Corporation
Lawyers Incorporating Service - Registered Agent
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Fluor Corporation
Lawyers Incorporating Service - Registered Agent
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Fluor Daniel Environmental Services
3333 Michelson Dr.
Irvine, CA 92730

The Shiloh Group, LLC
Brian C. Carter - Registered Agent
930 Shiloh Road
Windsor, CA 95492

RE: Notice of Violations and Intent to File Suit Under the Resource Conservation and Recovery Act ("RCRA")

Dear Polluters, Owner, Site Manager, Managing Agent, Head of Agency:

On behalf of Northern California River Watch ("River Watch"), I am providing statutory notification ("Notice") to Avendt Group, Inc., Ecodyne Corporation, Fluor Corporation, and The Shiloh Group, LLC, (collectively "Polluters"), of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA,") 42 U.S.C. § 6901 et seq. in conjunction with the continuing pollution at the Sites described below in the BACKGROUND section of this Notice.

RCRA requires that 60 days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred (see also 40 CFR §§ 254.2 and 254.3) . However, such an action may be brought immediately after such notification when a violation of Subtitle C of the RCRA is alleged (subchapter III, 42 U.S.C. § 6921 et seq.). Certain violations of California Title 22 may also be violations of RCRA Subtitle C.

RCRA also requires that a private party provide 90 days prior notice to the alleged violator, the Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred before initiating an action which alleges violations resulting in imminent and substantial endangerment to human health or the environment. However, such an action may be brought immediately after such notification when a violation of Subtitle C of RCRA is alleged (subchapter III, 42 U.S.C. § 6921 et seq.)

Subchapter C of the RCRA requires hazardous waste to be tracked from the time of its generation to the time of its disposal, and further requires that such waste not be disposed of in a manner which may create a danger to human health or to the environment. As discussed in this Notice, Polluters operate non-permitted, hazardous waste treatment, storage and disposal sites. Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Sites, and have failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Polluters appear to be disposing wastes off-site without compliance with either the various requirements under RCRA, or with the State of California's hazardous waste requirements authorized under RCRA. Polluters' mishandling of wastes in violation of Subchapter C of RCRA has created and is creating an imminent and substantial endangerment to human health or the environment. River Watch alleges violations of Subchapter C with regard to both a violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA (including California Title 22), as well as violations creating imminent and substantial endangerment to human health or the environment.

River Watch hereby notifies Polluters that at the expiration of the appropriate notice periods under RCRA, River Watch intends to commence a civil action against Polluters on the following grounds:

1. Polluters' use and storage of solid and hazardous wastes described in the BACKGROUND section of this Notice have violated and continue to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to RCRA regarding storage of pollutants. [42 U.S.C. § 6972(a)(1)(A)];
2. Polluters' operations at the Sites as identified in the BACKGROUND section of this Notice have caused contamination of soil and groundwater which presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972(a)(1)(B)].

Under 42 U.S.C. § 6972(a)(1)(A), Notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under RCRA, shall include sufficient information to permit the recipient to identify the specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving notice. River Watch therefore provides the following information:

1. *Specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated:*

RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k, the goals of which are to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly stored wastes.

The Environmental Protection Agency's ("EPA") waste management regulations are codified at 40 C.F.R. §§ 239-282. Regulations regarding management of hazardous waste begin at 40 C.F.R. § 260. Pursuant to the RCRA, California has enacted laws and promulgated regulations that are at least as stringent as the federal regulations (see California Title 22).

Polluters have no solid or hazardous waste permit for the storage, treatment or disposal of hazardous or solid waste at the Sites identified in this Notice. Polluters' use, handling, disposal and storage of waste at said Sites has violated and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to RCRA regarding solid or hazardous waste. [42 U.S.C. § 6972(a)(1)(A)].

Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Sites identified in this Notice, and have failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Polluters appear to be disposing wastes off-site without compliance with either the various requirements under RCRA, or with the State of California's solid or hazardous waste requirements authorized under RCRA. Polluters' mishandling of wastes in violation of Subchapter C of RCRA has created and is creating an imminent and substantial endangerment to human health or the environment.

2. *The Activity(ies) Alleged to Constitute a Violation*

To comply with this requirement, River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary, RCRA requires that the environment and public be protected from solid or hazardous wastes, such as those generated by Polluters. The pollutants found at the Sites identified in this Notice constitute solid or hazardous waste under RCRA, and are required to be managed such that potential and actual harm to the environment and public is eliminated. RCRA specifically protects groundwater.

The liability of Polluters stems from either their ownership of the Sites, or from activities conducted on the Sites by the entities which violated the RCRA and which have contributed to the past or present handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment. River Watch also alleges Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA. Polluters are guilty of open dumping as that term is used in RCRA by discharging the pollutants described in the BACKGROUND section of this Notice and allowing these pollutants to discharge to soils and ground as well as threatening waters. The Sites do not qualify as landfills under 42 U.S.C. § 6944, and do not qualify as permitted facilities for the disposal of hazardous waste. Polluters have no RCRA-authorized permits for disposal, storage or treatment of solid or hazardous waste of the type currently and historically being discharged at the Sites.

Polluters also have liability due to their ownership or operation of man-made conduits which have acted or currently act as preferential pathways which have caused pollutants to be discharged to aquifers, surface and groundwaters via Polluters' conduits, thereby facilitating pollutant migration, threatening a discharge to waters of the United States and contributing to the past or present handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Polluters have caused contamination of soil, surface and groundwaters in or around residential areas. The groundwater in the area of the Sites identified in this Notice is hydrologically connected to adjacent wetlands and surface waters, all waters of the United States. These waters of the United States are already affected or are at imminent risk of contamination from the pollutants at said Sites, which contamination presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972(a)(1)(B)].

3. *The person(s) responsible for the alleged violation*

The persons responsible for the alleged violations are the entities identified herein and collectively referred to as "Polluters" throughout this Notice.

4. *The range of dates during which the alleged activities occurred.*

Polluters have been in operation prior to the passage of RCRA and have been violating RCRA ever since it was passed. Disposition, discharge and release of pollutants from the Sites identified in this Notice can be traced as far back as 1953. RCRA is a strict liability statute. The range of dates covered by this Notice is May 1, 2005 through May 1, 2010. The majority of the violations identified in this Notice such as discharging pollutants to groundwater and surface waters, failure to obtain RCRA-authorized permits, failure to implement the requirements of RCRA, failure to meet water quality objectives, etc., are continuous; therefore each day is a violation. River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the Regional Quality Control Board ("RWQCB"), California Department of Toxic Substances Control ("DTSC"), GeoTracker, County Health and local police and fire departments.

5. *The full name, address, and telephone number of the person giving notice.*

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 500 Main Street, Suite 110, Sebastopol, CA, 95472; telephone 707-824-4372.

The violations of Polluters as set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected areas. The members of River Watch use the affected areas for recreation, hiking, photography, nature walks, sports, water, fishing, swimming, boating and the like. Said members' use and enjoyment of this natural resource are specifically impaired by these violations of RCRA.

BACKGROUND

The "Sites" which are the subject of this Notice consist of three areas of concern:

Wood Treatment Facility (LEA RWQCB global ID T0609700026);
Waste Pond (LEA DTSC global ID 49240001); and
Cooling Tower Site (LEA RWQCB, global ID 49420002).

The Sites are located in a portion of the Shiloh Road Industrial Park. The Shiloh Road Industrial Park comprises approximately 28 acres and is subdivided into numerous parcels, separated by chain link fencing, many of which are leased to small commercial and industrial businesses. It is unclear if any of these businesses have been informed of their proximity to the Sites.

From 1953 to 1961, Santa Fe Tank & Tower Company and Fluor Corporation (Fluor) manufactured wood products consisting of cross-arms, pipes, tanks and cooling towers on the Sites. Creosote, lead, and pentachlorophenol (PCP) were part of the manufacturing processes. It is quite likely that other toxic metals and possible solvents were used in these processes especially chromium, arsenic and copper. Further investigation is necessary in that regard.

From approximately 1962 to 1970, Fluor and its subsidiaries operated the property as a paint shop. During this time, toxic metals and materials such as asbestos, PCBs and even DDT were at one time or another used in various paint formulations. Lead is well known as a toxic metal which may be found in paint; however, other toxic metals used in the past in the formulation of paint should be considered as well including: chromium, cadmium, mercury, tin, copper, arsenic and radium.

In 1971, Ecodyne Corporation ("Ecodyne") demolished the facility buildings used in the wood and metal treatment operations on the Sites and covered the areas where these buildings had been located with a layer of dirt and shale. Residual materials from the operations of Fluor and Ecodyne remain in soils and groundwater, including dioxin, lead, copper, PCP, hexavalent chromium, polycyclic aromatic hydrocarbons (PAHs) and possibly arsenic.

Between 1984 and 1987, the property went through a number of ownership changes, and as of September 1987, became part of the Shiloh Industrial Park. In 1999, The Shiloh Group, LLC acquired the entire area comprising the Shiloh Industrial Park and thus became the owner of the Sites.

Ecodyne operated a wood treatment facility from July 1965 to January 1984, at the current Shiloh Road Industrial Park. Chromic acid, sodium dichromate, and copper sulfate were used, among other chemicals, in the wood treatment process. The Ecodyne pond site was used as a drip treatment facility for wood and metal products until the early 1970's. During site operations pentachlorophenol (PCP), creosote and lead were used to treat wood. Chemicals used in the operations were stored in above ground storage tanks as well as below grade storage tanks. It is currently unclear but suspected, that arsenic may also have been used as part of the wood preserving process. Some of the wood treatment solutions were applied to lumber in a pressure vessel. The surplus chemical solutions were pumped to unlined evaporation and settling ponds, which illegally discharged to surface drainage. The surface drainage discharged to wetlands, Pruitt Creek and eventually the Russian River.

In 1989 pursuant to findings that Polluters had created an imminent and substantial endangerment to health or the environment, Polluters began a groundwater extraction, treatment, and disposal system to help remediate groundwater contaminated with hexavalent chromium. The remediation effort was implemented pursuant to Cleanup and Abatement Order No. 89-61 adopted April 14, 1989 and Waste Discharge Requirements Order No 92-39 adopted on May 3, 1993. This system operated from March of 1992 to September of 1994.

In 1997 Polluters started direct injection of calcium polysulfide using a direct-push drilling rig. Injection of calcium polysulfide was conducted during three events from 1997 to 2002. These treatments were unsuccessful in lowering concentrations of chromium in the shallow groundwater near the source area, and did not appear to be capable of achieving remedial goals. In April 2007 additional injections of calcium polysulfide were performed in areas where hexavalent chromium was still persistent. During all these remedial processes nothing was done to prevent air laden with hexavalent chromium from contaminating the nearby businesses and exposing workers to toxic levels of hexavalent chromium as defined by the proposed California Public Health Goal (PHG) of inhalation of hexavalent chromium. In September and October of 2004 highly impacted soil was treated by mixing calcium polysulfide with the soil using a hydraulic backhoe. Currently the property is in verification monitoring to assess the impacts of remediation. More investigations need to be done before an effective remedial action plan can be designed and executed.

The former waste pond site is located within the Shiloh Road Industrial Park, and is currently fenced and posted as a hazardous waste site. This portion of the former Ecodyne site is currently vacant. Directly adjacent to the Ecodyne pond site to the northwest is another hazardous waste site currently undergoing remediation. The adjacent site is known as the Ecodyne (Cooling) Towers Site. The Ecodyne Towers Site is being cleaned up with the oversight of the RWQCB.

Potential contaminants of concern include dioxin, polynuclear aromatic hydrocarbons (PAHs), pentachlorophenol (PCP), hexavalent chromium, lead, copper and arsenic.

As of the most recent sampling, groundwater contamination for hexavalent chromium far exceeded the Maximum Contaminant Levels for total chromium of $50\mu\text{l}$ and proposed PHG for hexavalent chromium of $0.6\mu\text{l}$. Recent storm water analysis also revealed discharges to surface waters at levels exceed proposed PHG for hexavalent chromium.

The RWQCB has determined the pollution at the Sites impairs and threatens beneficial uses of both the surface and groundwaters at or near the Sites. The RWQCB issued numerous enforcement orders to Polluters which have determined that the current pollution at the Sites constitutes imminent and substantial endangerment to health or the environment. A portion of the Sites is so contaminated with hazardous chemicals that it is being managed by the DTSC.

The RWQCB identifies water quality objectives ("WQOs") that are more stringent than the WQOs identified by Polluters in their current remedial action plan ("RAP"). The WQOs identified by the RWQCB are based on the PHG, established by Cal/EPA and OEHHA. PHGs represent levels of contaminants in drinking water that would pose no significant health risk to individuals consuming the water on a daily basis over a lifetime. For carcinogens, PHGs are based on 10^{-6} incremental cancer risk estimates. The OEHHA and the California Department of Health Services consider the 10^{-6} risk level to represent a de minimis level of cancer risk for involuntary exposure to contaminants in drinking water. For other contaminants, PHGs are based on threshold toxicity limits, with a margin of safety. The MCLs listed in the RWQCB's Basin Plan and cited in the draft RAP as appropriate remedial goals were established based on considerations other than human health risk, including economic considerations for water purveyors. Alternatively, health risk-based WQOs for groundwater, such as PHGs, were established for the protection of sources of domestic water supply, and are set at levels that would be protective of human health for users of untreated domestic water-supply wells.

State Water Resources Control Board ("SWRCB") Resolution No. 92-49 requires that a RAP must provide a rationale for the finding that cleanup to background levels at the Sites is not feasible. The RAP should address restoration of the impacted water supplies to background levels, if feasible. If remedial goals for groundwater are to be established at levels greater than background, the alternative cleanup levels must not unreasonably affect present and anticipated beneficial uses of such water. In consideration of the State Anti-degradation Policy (SWRCB Resolution No. 68-16) and SWRCB Resolution No. 92-49, the alternative cleanup levels must also be consistent with the maximum benefit to the people of the State, and must not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Water Boards. Therefore, the remedial

goals established in the RAP, and the post remedial monitoring program must ensure that the health of current and future domestic water-supply well users is protected.

Polluters propose Enhanced Reductive Dechlorination ("ERD") but fail to disclose that ERD has the potential to generate additional toxic volatile compounds and to mobilize these compounds through soil gas. Polluters need to address HVOCs in soil gas, and install soil gas monitoring points that would be suitable to assess HVOC vapor concentrations beneath the on-site buildings before, during, and after ERD may be implemented beneath the Sites. Prior to issuance of a Waste Discharge Requirements Permit for the project to implement the RAP, the RWQCB would require a baseline survey of volatile organic compounds in soil gas at the Sites be included in the Report of Waste Discharge application for the Waste Discharge Requirements Permit. Today the Sites remain polluted and there seems to be little remediation work being done.

Conduits such as sewer, utilities, waters, roads, storm water system, and other services act as preferential pathways and contribute to the transport, storage or treatment of hazardous waste. These conduits are either owned or operated by Polluters. River Watch believes these preferential pathways have allowed pollutants to be carried offsite to residences and adjacent property as well as waters of the United States.

Despite all of the monitoring done at the Sites, records found and reviewed at the RWQCB do not indicate whether a current sensitive receptor survey (within last two years) has been completed. Adjacent businesses do not appear to have been identified or characterized with sufficient particularity as sensitive receptors, nor have they been tested. There has been no mass inventory analysis, making full characterization impossible. Some of the preferential pathways such as roads have been identified, but sewer lines (including a lateral that runs through the plume to the main), utility trenches, waterways, ditches and the like have not been comprehensively examined, nor has there been any attempt to determine if these conduits are acting as preferential pathways. The geomorphology of the area indicates the numerous gravel lenses which are known to be conduits and can cause significant offsite migration of pollutants. Polluters have made no attempt to determine the mass of any pollutants making mass balance clean-up impossible to determine.

For more than 30 years pollutants at the Sites have been migrating, contaminating new sources of drinking water, new aquifers, private property, waters of the United States, groundwaters and the like. Inadequate studies of aquifer have been done. River Watch is concerned that Pruitt Creek has already been compromised by Polluters' contaminants due to its proximity to the Sites. River Watch takes the position that adequate monitoring should be conducted along surface waters. Remediation must be conducted much more proactively to remove existing threats both to the environment and to individuals who live in the area.

As required by RCRA and California's implementation of RCRA, Polluters have: failed to prevent a release; failed to properly detect and monitor releases; failed to properly report and keep records of the release; and, failed to take proper corrective action. These violations are all ongoing.

Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Sites, and have failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Polluters appear to be disposing wastes offsite without compliance with either the various requirements under the RCRA, or with the State of California's hazardous waste requirements authorized under the RCRA. Polluters' mishandling of wastes in violation of Subchapter C of the RCRA has created and is creating an imminent and substantial endangerment to human health or the environment. These violations are all continuing.

LIABILITY

MCLs, WQOs and PHGs exist to ensure protection of the beneficial uses of water including human health. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply.

The RWQCB has adopted a Water Quality Control Plan or "Basin Plan", which designates all surface and groundwater at or near the Sites as capable of supporting domestic water supply.

The pollutants at the Sites have been characterized as "hazardous waste" and "solid waste" within the meaning of the provisions of RCRA. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to the use, storage and disposal of these constituents and products.

River Watch allege Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA.

River Watch allege Polluters to be past or present generators, past or present transporters, or past or present owners or operators of a treatment, storage, or disposal facility. River Watch alleges Polluters have contributed or are contributing to the past or present handling, storage,

treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Polluters have: failed to prevent a release; failed to properly detect and monitor releases; failed to properly report and keep records of the release; and, failed to take proper corrective action.

Polluters are guilty of open dumping as that term is used in RCRA by discharging pollutants to the open ground allowing these pollutants to discharge to both groundwaters and surface waters. The Sites identified in this Notice do not qualify as landfills under 42 U.S.C. § 6944, and do not qualify as facilities for the disposal of hazardous waste or solid waste. Polluters have no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Sites.

Between May 1, 2005 and May 1, 2010, ongoing violations of RCRA as described in this Notice have occurred. Polluters have caused or permitted, cause or permit, or threaten to cause or permit solid or hazardous waste to be discharged or deposited at the Sites where it is, or probably will be, discharged into waters of the State and now creates, or threatens to create, a condition of pollution or nuisance. The discharge and threatened discharge of such waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated.

Past or current violations of RCRA authorize the assessment of civil penalties. The enforcement provisions of 42 U.S.C. §§ 6928(a) and 6928(g) provide for penalties when conditions of hazardous waste disposal have been alleged, such as River Watch has alleged in this Notice with respect to the Sites. Accordingly, under these provisions, persons or entities violating RCRA are subject to substantial liability to the United States on a per-day basis.

Polluters' use and storage of wastes at the Sites between May 1, 2005 and May 1, 2010 has allowed significant quantities of hazardous constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California solid or hazardous waste regulatory programs.

Contaminant levels of HVOCs in the soil and groundwater at the Sites are significantly greater than the allowable MCL WQO or PHGs for said constituents. The HVOCs found at the Sites are known carcinogens and toxins. All are known to harm both plants and animals. In their concentrations at the Sites and in proximity to sensitive receptors such as groundwater, surface water, plants, insects, animals and humans, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

Polluters have known of the contamination at the Sites since at least the 1966, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the Sites, and to continually contaminate and re-contaminate soil, groundwaters and surface waters.

Violations of RCRA of the type alleged herein are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

In addition to the violations set forth above, this Notice is intended to cover all violations of RCRA evidenced by information which become available to River Watch after the date of this Notice, and seeks all penalties and other enforcement provisions related to such violations. Polluters are required to pay civil penalties on a per violation per day for their violations of RCRA.

REQUESTED RELIEF

Polluters must fully investigate the Site including:

- a. Comprehensive Sensitive Receptor Survey - A comprehensive sensitive receptor survey which will include an aquifer profile, surface water study, water supply survey, and building survey.
- b. Aquifer Profile Study - Aquifer profiles identifying all water bearing strata and communication with the other aquifers. Testing shall include all aquifers determined to be in communication with the surface unconfined aquifer and contaminated zones for all known pollutants at the Sites identified in this Notice.
- c. Conduit/preferential Pathway Study - A conduit/preferential pathway study identifying all conduits or preferential pathways such as sand and gravel lenses, utilities, roads, services and other potential pathways for pollution migration. Testing to include all conduits and preferential pathways found to have intersected the plume for all pollutants at the Sites identified in this Notice.
- d. Identification and Testing of Water Supply Wells - A door to door survey of potentially affected properties to determine the presence and location of any water supply wells (permitted or not). Also, testing for any water supply wells found to contain pollutants.

e. Surface Water Survey - A water survey study determining if any surface waters have been or have the potential of being contaminated by the pollutants at the Sites, to include testing of all surface waters and drainage within 1,500 feet of the outer extent of the plume.

f. Vapor Intrusion Study - A vapor intrusion study of the buildings at the Sites and buildings located on or offsite within the contaminated zone.

g. Determination of Mass of Plume Constituents - Determine mass of the plume and masses of the various pollutants at the Sites whether or not part of the "plume", such as lead.

h. Toxic Metal Reasonable Potential Analysis - A toxic metals study which will include all metals with a reasonable potential of being contaminants at the Sites, such as lead.

i. Full Remediation - Fully remediate the Sites reducing all contaminants of concern in the groundwater to below WQOs within five years.

CONTACT INFORMATION

River Watch has retained legal counsel to represent River Watch and its members with respect to the issues of violations raised in this Notice. All communications should be addressed to:


Jack Silver
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402
Office 707-528-8175
Fax 707-528-8675
Email lhm28843@sbcglobal.net

CONCLUSION

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of RCRA. At the close of the notice periods or shortly thereafter, River Watch intends to file suit against Polluters under the provisions of RCRA for each of the violations alleged in this Notice and with respect to the existing conditions at the Sites identified herein.

During the notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If Polluters wish to pursue such discussions in the absence of litigation, they are encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues set forth in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the notice period ends.

Very truly yours,


Jack Silver

JS:lhbm

cc:

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dorothy R. Rice, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

California Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Mark Leary, Executive Director
Calif. Integrated Waste Mgmt Board
1001 "T" Street
Sacramento, CA 95814

Calif. Environmental Protection Agency
P.O. Box 2815
Sacramento, CA 95812-2815

California Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

EXHIBIT B

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



July 9, 2010

**VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Ecodyne Corporation
Lawyers Incorporating Service – Registered Agent
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

The Shiloh Group, LLC
Brian C. Carter – Registered Agent
930 Shiloh Road
Windsor, CA 95492

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

To: Owner, Site Manager, Managing Agent:

NOTICE

I am writing on behalf of Northern California River Watch ("River Watch") with regard to the discharges of pollutants from the facilities of the former Ecodyne Corporation ("Ecodyne") located in Windsor, California, into waters of the United States, in violation of the Clean Water Act ("CWA").

By this Notice, River Watch is providing statutory notification to Ecodyne and The Shiloh Group LLC as current or former owners, site managers, or managing agents (hereafter referred to as "Polluters"), of continuing and ongoing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by Polluters' illegal discharge of pollutants from a point source to waters of the United States without a National Pollution Discharge Elimination System ("NPDES") permit.

This Notice also addresses the ongoing violations of the substantive and procedural requirements of CWA § 402(p) and NPDES General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit" or "General Permit"). The CWA prohibits storm water discharges without a permit pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

CWA § 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), a citizen must give notice of his/her intent to sue. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occur, and the registered agent of the alleged violator. River Watch believes this Notice provides proper notice of Polluters' violations as required by the CWA.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a NPDES permit pursuant to the CWA, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition. Without a NPDES permit **all surface and subsurface** discharges from a point source to waters of the United States are illegal.

River Watch hereby notices Polluters of the fact that they have no NPDES permit allowing them to discharge pollutants from the Site identified in this Notice and numerous point sources including the storage tanks identified in this Notice, to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a), CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b) as well as CWA § 402(p), 33 U.S.C. 1342(p). The CWA prohibits storm water discharges without a permit pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. **The specific standard, limitation, or order alleged to have been violated.**

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a NPDES permit pursuant to the Act, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition. Without a NPDES permit **all surface and subsurface** discharges from a point source to waters of the United States are illegal.

River Watch hereby notices Polluters of the fact that they have no NPDES permit allowing them to discharge pollutants from the Site identified in this Notice and numerous point sources including the storage tanks, former structures and ponds identified in this Notice, to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a), CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b) as well as § 402(p), 33 U.S.C. 1342(p). The CWA prohibits storm water discharges without a permit pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

2. The activity alleged to constitute a violation.

To comply with this requirement River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary the CWA requires that all discharges of pollution from a point source to a water of the United States without a NPDES permit are prohibited. River Watch alleges Polluters are discharging pollutants including toxic metals such as hexavalent chromium from the Site and various point sources within the Site as identified in this Notice, to waters of the United States. The point sources were tanks, structures such as the tower, ponds and the like, which have been subsequently removed. The solid and hazardous waste discharged from these tanks is also a point source. These point sources continue to discharge from the Site to the surface waters adjacent to the Site.

The liability of Polluters stems from their ownership or operation of the Site, or due to the activities conducted on the Site by Polluters as well as ownership and control of conduits which act as preferential pathways and point sources for the pollutants.

3. The discharger responsible for the alleged violation.

The dischargers responsible for the alleged violations are Ecodyne Corporation, The Shiloh Group, LLC, as current or former owners, site managers, or managing agents of the Site identified in this Notice. Those dischargers are referred to as "Polluters" throughout this Notice.

4. The location of the alleged violation.

The location or locations of the various violations are identified in the Background section of this Notice as well as in records either created or maintained by or for Polluters which relate to Polluters' activities at the Site identified herein.

5. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.

Disposition, discharge and release of pollutants has been ongoing for several years. The CWA is a strict liability statute with a 5-year statute of limitations; therefore, the range of dates covered by this Notice is July 9, 2005 through July 9, 2010. River Watch will from time to time update and supplement this Notice to include all violations which occur after the date of this Notice. The majority of the violations identified in this Notice such as discharging pollutants to

waters of the United States without a NPDES permit, failure to obtain a NPDES permit, failure to implement the requirements of the CWA, failure to meet water quality objectives, etc., are continuous, and therefore each day is a violation.

River Watch believe all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the Regional Quality Control Board ("RWQCB"), GeoTracker, Sonoma County Health and local police and fire departments.

6. The full name, address, and telephone number of the person giving notice.

The person giving this Notice is Northern California River Watch, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and ground water in Northern California. River Watch is organized under the laws of the State of California. Its address is 500 South Main Street, Suite 110, Sebastopol, CA, 95472. Phone / Fax: (707) 824-4372. Email US@ncriverwatch.org.

BACKGROUND

The Site is located in a portion of the Shiloh Road Industrial Park. The Shiloh Road Industrial Park comprises approximately 28 acres and is subdivided into numerous parcels, separated by chain link fencing, many of which are leased to small commercial and industrial businesses. It is unclear if any of these business have been informed of their proximity to the Site.

From 1953 to 1961, Santa Fe Tank & Tower Company and Fluor Corporation (Fluor) manufactured wood products consisting of cross-arms, pipes, tanks and cooling towers on the Site. Creosote, lead, and pentachlorophenol (PCP) were part of the manufacturing processes. It is quite likely that other toxic metals and possible solvents were used in these processes especially chromium, arsenic and copper.

From approximately 1962 to 1970, Fluor and its subsidiaries operated the property as a paint shop. During this time, toxic metals and materials such as asbestos, PCBs and even DDT were at one time or another used in various paint formulations. Lead is well known as a toxic metal which may be found in paint; however, other toxic metals used in the past in the formulation of paint should be considered as well, including: chromium, cadmium, mercury, tin, copper, arsenic and radium.

In 1971, Ecodyne demolished the facility buildings used in the wood and metal treatment operations on the Site and covered the areas where these buildings had been located with a layer of dirt and shale. Residual materials from the operations of Fluor and Ecodyne remain

in soils and groundwater, including dioxin, lead, copper, PCP, hexavalent chromium, polycyclic aromatic hydrocarbons (PAHs) and possibly arsenic.

Ecodyne operated a wood treatment facility from July 1965 to January 1984, at the current Shiloh Road Industrial Park. Chromic acid, sodium dichromate, and copper sulfate were used, among other chemicals, in the wood treatment process. The Ecodyne pond site was used as a drip treatment facility for wood and metal products until the early 1970's. During site operations, pentachlorophenol (PCP), creosote and lead were used to treat wood. Chemicals used in those operations were stored in above ground storage tanks as well as below grade storage tanks. It is currently unclear but suspected, that arsenic may also have been used as part of the wood preserving process. Some of the wood treatment solutions were applied to lumber in a pressure vessel. The surplus chemical solutions were pumped to unlined evaporation and settling ponds, which illegally discharged to surface drainage. The surface drainage discharged to wetlands, Pruitt Creek and eventually the Russian River.

Between 1984 and 1987, the property went through a number of ownership changes, and as of September 1987, became part of the Shiloh Industrial Park. In 1999, The Shiloh Group, LLC acquired the entire area comprising the Shiloh Industrial Park and thus became the owner of the Site.

VIOLATIONS

Discharge of Contaminated Stormwater

Polluted stormwater containing hexavalent chromium as well as other materials from the Site is discharged, untreated, directly to the culvert adjacent to the Site. This culvert drains into Pruitt Creek which drains into the Russian River. The Russian River has many designated beneficial uses including municipal and domestic supply, agricultural supply, groundwater recharge, recreation, fishing, wildlife habitat, fish migration and spawning and aquaculture.

Hexavalent chromium has been found in the stormwater on the Site at 3.5 $\mu\text{g/L}$. Hexavalent chromium is recognized as a human carcinogen. Hexavalent chromium is known to cause skin rashes, stomach ulcers, respiratory problems, kidney and liver damage and death. The proposed public health goal for hexavalent chromium is 0.6 $\mu\text{g/L}$. Hexavalent chromium is also toxic to fish and can cause severe gill damage.

Pruitt Creek is the receiving water of the contaminated stormwater from the Site. Polluted stormwater run off is the biggest source of pollution of the nation's waterways. The CWA is intended to protect against this type of stormwater pollution. Stormwater drains into the on-site culvert which connects directly to Pruitt Creek. The culvert is inadequately protected.

Pruitt Creek is a watercourse in the Russian River watershed. All surface waters in this area drain to the Russian River which is also listed as impaired even thirty years after the adoption of the CWA. The Russian River and its tributaries are habitat to naturally spawned populations of

Coho salmon (*Oncorhynchus kisutch*), Steelhead trout (*Oncorhynchus mykiss*), and Chinook salmon (*Oncorhynchus tshawytscha*) inhabiting the California Coast Province. These salmon and trout have been federally listed as threatened under the Endangered Species Act. Critical habitat has also been designated for these species to include all estuarine and river reaches accessible to salmonids below longstanding, naturally impassable barriers.

Direct Discharges from Subsurface Releases

Existing records indicate pollutants continue to be discharged from the Site to waters of the United States via subsurface, hydrologically connected, contaminated groundwaters. Former tanks, the tower and pond are some of the point sources contributing to the surface discharges. Other point sources include the drainage ditches which act as conduits for the transmission for pollutants from the Site to waters of the United States. Pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by Polluters as identified in this Notice are prohibited by law. Beneficial uses of surface waters are being affected in a prohibited manner by these violations. The EPA and the State of California have identified Polluters' operations at the Site as a point source, the discharges from which contribute to violations of applicable water quality standards.

River Watch alleges that from July 8, 2005 through July 8, 2010, Polluters have violated the CWA by failing to acquire a NPDES permit and for discharging pollutants into waters of the United States without a NPDES permit. Each and every discharge is a separate violation of the CWA.

These enumerated violations are based upon review of the RWQCB files and Geotracker files for Polluters. In addition to all of the above violations, this Notice covers any and all violations evidenced by Polluters' records and monitoring data which Polluters have submitted (or have failed to submit) to the RWQCB and/or other agencies during the period July 8, 2005 through July 8, 2010. This Notice also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by Polluters to the RWQCB, Geotracker or other agencies.

Pursuant to CWA § 309(d), 33 U.S.C. § 1319(d), each of the above-described violations of the CWA subjects the violator to a penalty per day/per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the CWA pursuant to CWA § 505(a) and § 505(d), 33 U.S.C. §§ 1365(a) and (d), and such other relief as is permitted by law. Lastly, CWA § 505(d), 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

The violations of Polluters as set forth in this Notice affect the health and enjoyment of River Watch members who reside, work and recreate in the affected area. River Watch members use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, property rights, use and

enjoyment of this area is specifically impaired by Polluters' violations of the CWA as alleged in this Notice.

CONTACT INFORMATION

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esquire
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax 707-528-8675

CONCLUSION

River Watch is willing to work with Polluters to bring them into compliance with the CWA. However, unless contact with the undersigned is initiated before the expiration of the 60-day Notice period, River Watch intends to file suit in federal court to compel compliance.

Very truly yours,



Jack Silver

JS:lhbm

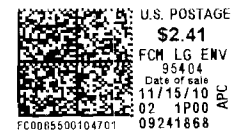
cc:

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

v Office of Jack Silver
Box 5469
Santa Rosa, CA 95402-5469



Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 4390

Ben Franklin Station
Washington, DC 20044-4390

NOV 17 2010
RECEIVED
DOCUMENTS

